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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CHASOM BROWN, MARIA NGUYEN,
WILLIAM BYATT, JEREMY DAVIS, and
CHRISTOPHER CASTILLO, individually
and on behalf of all similarly situated,

Plaintiffs,

v.

GOOGLE LLC,
Defendant.

Case No. 5:20-cv-03664-LHK

**DEFENDANT GOOGLE LLC'S
ADMINISTRATIVE MOTION FOR
LEAVE TO FILE REPLY TO
PLAINTIFFS' RESPONSE**

Judge: Honorable Lucy H. Koh

Pursuant to Civil Local Rules 7-11 and 7-3(d), Defendant Google LLC (“Google”) respectfully moves for leave to file the reply, attached hereto as Exhibit 1, and supporting declarations and evidence, attached hereto as Exhibits A, B, and C, to address new arguments raised for the first time in Plaintiffs’ Response (Dkt. 111) to the Declaration of Stephen A. Broome (“Broome Declaration”) (Dkt. 106) and Declaration of Jesse Adkins (“Adkins Declaration”) (Dkt. 107).

LEGAL AUTHORITY

A supplemental response may be considered where new arguments are made, or new evidence is presented, in a brief. *GT Nexus, Inc. v. Intrtra, Inc.*, 2014 WL 3373088, at *1 (N.D. Cal. July 9, 2014) (“If a party raises a new argument or presents new evidence in a . . . brief, a court may consider these matters only if the adverse party is given an opportunity to respond.”). “[W]here new evidence is presented in a reply to a motion . . . the district court should not consider the new evidence without giving the [non-]movant an opportunity to respond.” *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996); *see also El Pollo Loco, Inc. v. Hashim*, 316 F.3d 1032, 1040-41 (9th Cir. 2003).

ARGUMENT

The Court held a hearing on Google’s motion to dismiss on February 25, 2021. During that hearing, the Court requested that Google submit two declarations regarding the Court’s use of certain Google services on its website. Dkt. 114 at 58:11-16. After Google filed the declarations, the Court permitted Plaintiffs to “file a brief response” by March 8, 2021. Dkts. 109, 110. On March 8, 2021, Plaintiffs filed a response that raised the following new arguments not previously discussed in Google’s declarations or in its motion to dismiss briefing: (1) “Google’s [declarations] provide no support for Google’s motion to dismiss”; (2) Google’s declarations “failed to meaningfully respond to the Court’s requests” at the February 25, 2021 hearing on Google’s Motion to Dismiss; (3) Google’s declarations “failed to provide the information Plaintiffs requested” at the Motion to Dismiss hearing and in a subsequent follow up email; (4) Google’s declarations “provide no details about what Google collects with GStatic and how Google uses that information”; and (5) Google’s counsel learned about the Court’s use of Google services using “sophisticated developer tools and unlimited resources.” Dkt. 111 at 2-3. Since Google did not (and could not) address any of these arguments in either of its declarations or in its motion to dismiss briefing, it had no opportunity to respond to these arguments.

1 Accordingly, Google respectfully requests leave to file the proposed short reply and supporting
2 declarations, attached hereto as Exhibit 1, to respond to the arguments in Plaintiffs' response.

3 **CONCLUSION**

4 For the foregoing reasons, Google respectfully requests leave to file its proposed reply
5 attached hereto as Exhibit 1.

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7 DATED: March 11, 2021

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